



affirmation



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Crusader for the rights of the handicapped



by Jill Armstrong

John Kellerman, a long-time community advocate and consultant to organizations and facilities for disabled persons, has become actively involved in another process for increasing equality of opportunity for persons with handicaps. He has filed a number of complaints under the Code alleging discrimination because of handicap, one of which is proceeding to a board of inquiry.

For Mr. Kellerman, and many of the estimated 14 per cent of Ontario residents with handicaps, the inclusion of this ground in the *Human Rights Code, 1981* was a welcome extension of the provisions of anti-discrimination legislation. John Kellerman has cerebral palsy, and the physical and social barriers facing persons who are impaired in mobility and speech are all too familiar to him.

John's commitment to and participation in the human rights complaint process is a natural outgrowth of a career dedicated to eliminating and remedying the many forms of discrimination, both subtle and overt, experienced by persons with handicaps. Shortly after receiving his Grade 13 diploma, he founded ALPHA (Action League for Physically Handicapped Advancement) while working as a community organizer on a Company of Young Canadians project. ALPHA was one of the first groups of handicapped persons to organize themselves as a political force in Ontario, and one of its early victories was approval by Toronto's city council of the proposal to install ramps on sidewalk curbs.

During the 1970s, John was instrumental in founding a number of other advocacy and self-help organizations and facilities. These included a summer camp program called Physically Handicapped Able-bodied Development Opportunities, located in Beaverton, Ontario. Its goal was the integration of both handicapped and non-handicapped individuals of all ages. As such, the program was a forerunner of the now-accepted concept of normalization. John also founded 'Kellermen House', a profit-sharing residential facility for persons with handicaps.

In 1974 John was featured in a National Film Board production entitled 'Walk a Mile in My Shoes', which addressed the transportation problems experienced by disabled persons. He worked with the NFB for several months to promote the film.

Several other positions enabled John to deal with issues relating to housing, transportation and building design. He assisted handicapped persons to locate accessible housing while he was co-ordinator of the Toronto Handicapped Housing Registry, and he was a researcher for the Behavioural Team, a consulting firm, on a project examining building design and transportation. From 1974 to 1979 John was a member of the Ontario Advisory Council on the Physically Handicapped.

In 1980 Mr. Kellerman assisted the consumer organization, United Handicapped Groups of Ontario, in promoting 1981 as the International Year of Disabled Persons. He also conducted a promotional campaign and discussion forums among decision-makers and consumer organizations prior to the International Year.

Always interested in municipal affairs, John sat on a mayor's task force in 1977 that made recommendations to the Municipality of Metropolitan Toronto for improving access of handicapped persons to transportation and housing. Later, in 1982, he stood as a candidate for mayor, with the campaign slogan, 'If I can do it, you can do it.' The thrust of his message was the responsibility of each member of society to create an environment that would enable all persons to reach their maximum potential.

Many of John's complaints under the Code have alleged discrimination in services and facilities because of handicap, on being refused service in restaurants and dining lounges or on being subjected to differential treatment in these establishments. In most of these complaints, a mutually satisfactory settlement was reached, including such remedies as compensation for insult to dignity and an offer of a complimentary meal.



John Kellerman holds his two young godchildren.

Because the commission attempts to achieve a settlement that will prevent the recurrence of discrimination, the resolution of a complaint will usually include such preventive measures as human rights seminars for the respondent's employees and a written policy of non-discrimination.

As part of the commission's public education program, consultations were held with the president of the Canadian Restaurant and Foodservices Association, which developed a brochure outlining methods for im-

proving the services of the hospitality industry for patrons with disabilities. Shortly after the handicap provisions of the Code were enacted in 1982, the CRFA sent copies of the brochure to its membership. It provides a comprehensive outline of how food service personnel can become aware of the special needs of their handicapped customers and how best to serve them.

Jill Armstrong is Manager, Program Review and Design, Ontario Human Rights Commission.

Peterborough initiative

A communication

We at Edmison Heights school would like to inform you of some of the ways we feel our school is contributing to the concept of human rights. We share your concern for this important ideal and see the ever increasing need to demonstrate to our young people the advantages of understanding and respecting the uniqueness of each individual.

Our school strives for an atmosphere that fosters respect for individual differences in physical, mental and emotional development. Within our classrooms, we attempt to plan programs that will meet these individual needs. In addition, resources are made available for students who would benefit from both remedial and enrichment activities.

Within our population is a class for the trainable mentally retarded. Rather than seeing these children as 'strange' or 'different' they are integrated into our school population and supported by our students. We view this as an opportunity to develop an understanding for individuals in the community who would need both physical and emotional support.

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Procedures before the federal human rights tribunal

by R.G.L. Fairweather

When Parliament gave unanimous approval of the legislation establishing the Canadian Human Rights Commission in 1977, several innovations were included in the statute. One had to do with the 'special status' given to conciliators and another with the method of appointment and the powers of human rights tribunals. What follows is a brief sketch of these points and some statistics to give a perspective to the complaint resolution process.

All 10 provinces had human rights commissions before Parliament created the commission. Labour Canada statistics inform us that only about 12 per cent of all employment in Canada falls within federal jurisdiction.

The legislation is strict about the separation of the roles of investigator and conciliator, and specifies that a person is not eligible to act as a conciliator in respect of a complaint if that person has already acted as an investigator of the complaint.

A further safeguard can be found in the fact that any information received by a conciliator in the course of attempting to reach a settlement of a complaint is confidential and cannot be disclosed except with the consent of the person who furnished the information. The theory seems obvious – to be trusted, conciliators must be able to assure the parties that they, the conciliators, are not compellable witnesses in future proceedings if such become necessary because attempts to conciliate prove futile.

There has been some confusion about the function of the Canadian Human Rights Commission on the one hand and the independent human rights tribunals on the other. The commission does not have the power to im-

pose a settlement on anyone. In fact, to use familiar terminology, the commission is more like a conciliator than an arbitrator.

The biggest stick it carries is that it can refer a difficult case to a tribunal, which holds hearings in public and reaches its decision in complete independence. A case is now before the Federal Court of Appeal, challenging the assumption that tribunals are independent because they are appointed by the commission from a list of individuals established by the governor-in-council. I let this fact speak for itself: a survey in August 1984 showed that tribunals in the initial round – disregarding appeals – substantiated complaints of discrimination 18 times and dismissed them 20 times.

It is independent tribunals, not the commission, which have the power to make binding orders. If one of the parties is dissatisfied with a tribunal decision, an appeal lies to the Federal Court. And before a complaint is referred to a tribunal – indeed, in all cases coming to the commission – the material on which the commission bases its decision is made available to the parties, who then have the opportunity to present written submissions.

Turning to the appointment of tribunals, Parliament approved the method of appointment of tribunals provided for in the *Canadian Human Rights Act* because the independence of some provincial commissions was suspect. Ministers (of justice or labour depending upon which reporting route was used) had discretion whether to appoint tribunals or not. Parliament therefore decided to vest the appointment of a tribunal in the commission which, in fact, delegates the authority to me as Chief Com-



missioner once the decision is made that the appointment is warranted on the basis of the fact ascertained by an investigator.

The tribunal secretariat prepares a list of potential tribunal members from which selections of either a one-person or a three-person tribunal are made as objectively as possible given the realities of geography, language and legal experience. No member, officer or employee of the commission is eligible to be on the list of names provided by the governor-in-council.

During its start-up, the commission has tried to tailor its procedures to

meet natural justice standards that are themselves in the course of evolution. The commission, as a statutory body, is eager to comply with any amendments to its powers that may be adopted by Parliament either by reason of admonitions from the courts or as a consequence of definitions of fundamental justice made necessary by the Charter of Rights and Freedoms.

R.G.L. Fairweather is Chief Commissioner of the Canadian Human Rights Commission. Condensed from a longer article and reprinted with the permission of Mr. Fairweather.

Peterborough initiative *continued from page 1*

Our school is somewhat unique in that we are one of only two French Immersion schools in Peterborough. Our English and French students work together in some of their classes and play together in the yard. We welcome and encourage the variations in our Canadian culture and encourage students to see these variations as an opportunity for growth and understanding.

Our children volunteer each year to participate in the UNICEF program. Films and filmstrips encourage students to understand the needs of others and to take an active role in helping. Each year we provide Christmas hampers for less fortunate families in the community. Our Foster Child project was initiated this year by the students as an outcome of a student prepared program on Remembrance Day.

We were fortunate to have the cast of the group 'Up With People' visit our school in December. It consists of a group of college age students from seventeen different countries who traverse the globe promoting

world understanding. They came to share their experiences and interact with our students. Back in the classroom, teachers and students discussed the ideals represented by the group, and our newspaper column reflects some of the students' thoughts.

Enclosed you will find just a few examples of student work that we would like to share with you. (See the two poems in cols. 3 and 4.)

The promotion of human rights is an integral part of our program, and we will continue to seize every opportunity to promote the concept. We feel that through education, we are imparting not only knowledge and skills, but also fostering attitudes for improved understanding of individual rights.

Sincerely,

Warren Rosborough,
Principal, Edmison Heights Public School
Peterborough

My Sister

My sister is deaf. We play together sometimes. We have to sign to her. She has two hearing aids. She wants to play with me all the time. She loves me, and I love her.

by Jayne Griska
Grade 2

People come in different sizes, some are very small, But on the other opposite hand, some are very tall. People speak in different languages, and some in ours of course. Some people have different hobbies, some like to ride a horse! They might speak Chinese, or like to skate, But I really think that people are great!

by Lisa Quinlan
Grade 6

From misunderstanding to understanding

A letter to the commission

Dear Ms. Frank:

I am writing to let you know what has transpired regarding A.B. Company, since I last spoke with you.

After I asked you to call A.B., my lawyer received a call asking that I report to work on Wednesday morning. There, the personnel manager said that the entire situation was a misunderstanding. He said that he was not aware that I was a Hindu or that there was any significance to my wearing the nose-pin. He also said that I should rest assured that they would not make things difficult for me when I returned, that they were calling me back because they genuinely wanted me to work for them.

I was asked to report to personnel. When I arrived, the manager had a chat with me. He explained again that the whole situation was a mistake. He said that the company was a law-abiding organization. They had not done anything intentionally, that anything said or done was out of ignorance. After speaking with you they called the Indian consulate's office and an organization called the Hindu Purushad to find out more

about the nose-pin, its significance and why I would not remove it. He also said that he hoped my opinion of the company would improve once I got to know them better.

I told him that I certainly wasn't going to hold any grudges, and if anything I said on Monday was offensive to him that I apologized but I had been most frustrated.

I was most warmly received by my co-workers, and once the initial awkwardness was over everything has been working out very well. I have been told by my supervisor that I am doing extremely well in the training and she is very pleased with my progress.

I would like to say a most heartfelt thank you for your assistance and also apologize for not writing this letter earlier. Once again, thank you from the bottom of my heart.

Sincerely,
K.S.

Can racial attitudes be changed?

by Ruth Schweitzer Rozenberg

'Yes, they can!' is the response given by a film that examines the racial attitudes of elementary school children of white, black and East Indian origin.

The film, 'Can Racial Attitudes Be Changed?' was commissioned by the Race Relations Division of the Ontario Human Rights Commission and was based on a study of Grades 5 and 6 students.

The film revealed a high degree of acceptance by the black and East Indian students of their white schoolmates, but fewer white students were shown to be accepting of their black and East Indian counterparts. It is made clear that this attitude on the part of whites has had, and continues to have, a detrimental effect on the self-image of visible minority children.

Recognizing the realm of influence the school exercises on moulding students' racial attitudes, the film focuses its attention on the school's share of responsibility in bringing about an attitudinal change through a complete revision not only of philosophy but of methodology as well. At the same time, it encourages the audience to view the question of multicultural and multiracial attitudes

in the education arena from a new perspective. Thus the film is an effective tool in stimulating creative discussion of attitudinal reform and development.

'Can Racial Attitudes Be Changed?' was recently presented to an extensive audience representing various educational institutions in the province of Ontario - teachers, education administrators and educators at large - as well as community representatives.

A spirited half-hour question and discussion period followed the premiere, and the audience's reaction and feedback enriched the presentation considerably.

The film was welcomed by everyone as an effort to tackle and discuss the issue of racism in the classroom.

As a spin-off, requests from different groups to view the film have already made it necessary to order copies to keep up with the schedules for presentation across the province.

Ruth Schweitzer Rozenberg is a race relations officer with the Race Relations Division of the Ontario Human Rights Commission.

One telephone call

A black Jamaican woman went to view an apartment that had been advertised in the newspaper, and was advised by the superintendent that it was taken. On returning home, she telephoned the number shown in the ad and was told the apartment was still available. She contacted the

commission and the officer telephoned the building manager. He was unaware of the incident, but asked the officer to advise the complainant to go to the superintendent's office and reapply for the apartment. The complainant did so, and notified the commission that she had been accepted. The complaint was closed as settled.

Appreciation

by Sherman Jones

Sherman Jones is a graduate of the Youth Employment Project, a program providing for the placement of young people from several neighbourhoods in Metropolitan Toronto in a variety of jobs. In addition to gaining valuable work experience, the participants received race relations and life-skills training. Following is Sherman's speech at the project's closing ceremonies.

On behalf of my colleagues in the Youth Employment Project, I would like to express appreciation for the positive experience we have had.

This project, under the supervision of the Race Relations Division, provided some 35 unemployed youths in targetted communities an opportunity to work with various employers in a 16-week program. This opportunity, as we saw it, gave some of us the work experience that was needed for the job market.

I was particularly impressed by some of the interesting facts and resources

shared at the Fridays' training sessions.

My overall impression of this program is positive. I do hope, however, that in the future more youth could be employed in the program.

The Youth Employment Project owes its success to its participants, sponsors and, especially, the Race Relations Division for its guidance during the course of the project.

We appreciate having such a worthwhile and positive experience.

Economics, not discrimination, led to dismissal

The complainant, an East Indian, alleged that the respondent company, Lido Industrial Products, discriminated against him at the time that he was laid off after having been employed by the company for approximately nine years. More specifically, he claimed that the dismissal of employees at the respondent company in June 1982 was a preferential layoff in which the respondent showed bias in favour of persons of Polish and Eastern European extraction. The complainant claimed that this preferential layoff amounted to discrimination on the basis of race, colour, ancestry and place of origin in violation of sections 4(1) and 8 of the *Human Rights Code, 1981*.

A board of inquiry was appointed, and it rendered its decision on May 28, 1985.

Referring to the case of *Bushnell Communications*, the board held that the test to be used in determining whether discrimination has been a

factor is whether race is a 'proximate cause for dismissal' although race need not be the only cause. While there was evidence that the management and work force of the respondent company consisted predominantly of persons of an Eastern European background, the board held that this alone was insufficient proof that racial discrimination was a factor in either the employment or layoff policies of the company.

The board found that economics was probably the only reason for Mr. Randhawa's dismissal since the company was in serious financial difficulties at the time of his layoff. Therefore, it was held that Mr. Randhawa was not discriminated against on the basis of race, colour, ancestry or place of origin in his dismissal by Lido.

The complaint was dismissed.

Christine Silversides is a second-year law student at Osgoode Hall, York University. She worked with the commission during the summer of 1985.

Commentaires sur une conférence

Les commentaires suivants ont été adressés à Madame Thérèse Legault, Supérieur de la Région Est, par l'administration de l'École St-Philippe, selon les références de la Conférence sur le Développement Professionnel des Enseignants-es, à laquelle Madame Legault fut participante.

'La journée d'activités professionnelles du 26 octobre est terminée et cependant on en parle encore.

'Selon les évaluations et les commentaires, nos animateurs et animatrices sont des ressources qui manipulent, exploitent, partagent leur richesse avec aplomb et compétence, avec dynamisme et enthousiasme lors de leurs ateliers.

'Je tiens à vous remercier d'avoir participé à faire de cette journée pédagogique un franc succès. Tout comme les participants, j'apprécie grandement votre précieuse collaboration.

'Veuillez accepter, chère madame, ma profonde gratitude.'

Effective April 1, 1985 'Handicap'

The interpretation of 'handicap' as defined in the *Human Rights Code, 1981* has been amended to include: 'An injury or disability for which benefits were claimed or received under the *Workers' Compensation Act*.'

Welcome new commissioners

Three Profiles by Rick Johnston

Leslie Blake-Côté

Leslie Blake-Côté says her writing background has given her a 'sixth sense', which is helpful when dealing with human rights cases. Appointed to the commission for a three-year term effective February 19, 1985, her experience in free-lance reporting exposes her to a variety of people in the community and allows her to acquire an excellent grasp of current issues. 'I have an insatiable curiosity,' she says. 'I always have to know the "whys" and "hows" of everything.'

Ms. Blake-Côté has written feature and human interest articles for *The Toronto Star*, *The Financial Times of Canada*, and other Canadian publications. One article she wrote for *Canadian Living* magazine dealt with teenagers who stutter and the problems they encounter. She later developed this into an article for *Financial Post Magazine* concerning the effects of stuttering on business executives.

Ms. Blake-Côté is also involved in broadcast journalism. She currently hosts two shows for Rogers Cable TV: 'Canadian Club Luncheon', televised from the Royal York Hotel, and 'Reaction', a live current events phone-in show featuring a guest panel.

An avid fitness enthusiast and athlete, Ms. Blake-Côté runs every morning and is a fitness instructor for the Department of Parks and Recreation in Scarborough. She teaches exercise classes to several hundred people weekly and also trains the fitness assistants. Ms. Blake-Côté says she finds exercise to be a great stress release.

In 1966 she graduated from the University of Ottawa (St. Patrick's College) with a BA in liberal arts, majoring in history and English. After obtaining a teaching certificate at Queen's University in Kingston, she taught high school history and geography in Ontario and Quebec. She also attended journalism and business courses at Ryerson Polytechnical Institute in Toronto.

While at university, Ms. Blake-Côté began her volunteer work, which continues to this day. She headed a group of volunteers who visited parentless children and took them out on picnics and all-day excursions. The volunteers raised the money to fund these outings through car washes and corporate donations. She also spends time working with seniors, and was an advisor for Junior Achievement.

The opportunity to be a member of the Human Rights Commission complemented her personal sense of obligation to those who are being treated unfairly in the community. And despite her colleagues' diverse backgrounds and the different ways in which they approach their task, Ms. Blake-Côté says the commissioners' similarity of ideals and goals makes the experience of working with them enjoyable and fulfilling. 'We're all encouraged by the realiza-



tion that we do have an impact,' she says. 'We know and have seen that we can help to rectify the problems that people are having.'

She says that she and her husband strive to eliminate the stereotyping of roles in the family. 'It's not unusual to have me taking a woodworking course and my husband spending hours preparing weekend meals,' she says. 'In fact, Jean-Claude is considered the gourmet chef of the family.'

With her daughters (they have two girls and a boy), she stresses her strong concern for women's issues. 'They can be anything they want to be provided they work tirelessly to get there,' she said. 'As women, it's essential that they maintain their financial independence and plan on supporting themselves for the rest of their lives.'

R. Lou Ronson

'As a youngster I suffered both physically and mentally from anti-Semitism,' says R. Lou Ronson, Ontario Human Rights Commissioner. 'The experience has had a tremendous influence in sharpening my own sensitivity to the need for good human relations.'

Mr. Ronson has been involved in protecting human rights for over 40 years. In the 1940s, as a member of B'nai Brith, a 143-year-old organization that operates in 45 countries, he lobbied for the *Fair Accommodation and Practices Act*. According to Mr. Ronson, this became the first progressive human rights legislation in Ontario.

Besides being national president of B'nai Brith Canada from 1979 to 1980, Mr. Ronson has been a leader in many community service organizations and events, including national co-chairman of the Canadian Council of Christians and Jews, director of the National Retinitis Pigmentosa Foundation of Canada, and chairman of the National Conference on Human Relations for Labour and Management in 1975.

Mr. Ronson's participation in these activities has given him the opportunity of meeting many community leaders from around the world. 'I've been able to learn about human rights, or rather, lack of human rights, in other countries,' he says.

'It makes one appreciate living in Canada.'

According to Mr. Ronson, Canadians are generally fair-minded people. 'Some may unconsciously practise discrimination, but through education, he says, these people can be better sensitized to the feelings of those who are being discriminated against.'

Creating a strong awareness of human rights is what Mr. Ronson sees as the role of the Ontario Human Rights Commission. 'It's not enough to solve an individual problem,' he says. 'A good job is done when precedents are set and the public is educated to the realization that discriminatory policies are detrimental to society.'

'The commissioners are a good, conscientious group,' adds Mr. Ronson. 'They are attempting to protect human rights on the basis of equality.'

Mr. Ronson, appointed to a three-year term in February 1985, believes that the commission has a good cross-section of representation. He cites his own status as somewhat unique in that he is a businessman and represents the industrial sector. He is a director of various banks and insurance companies, and is chair-



man of the board of Work Wear Corporation of Canada Ltd. and its subsidiaries.

In all the management positions he has held throughout his business career, Mr. Ronson has adopted policies that create better human relations in the workplace. Since 1952, he says, he has stressed the importance of human rights seminars, and believes in and practises the concept of equality in employment.

According to Mr. Ronson, he has had to do a lot of 'homework' at night and on weekends as a result of the long hours he spends attending business and community functions. In 1982 he retired as president and CEO of Work Wear and became chairman of the board in an advisory capacity. And although he still has commitments, he enjoys the extra time he now has to spend with his wife Hildegard, his son Jeremy and his daughter Rhonda. 'Since I've retired,' says Mr. Ronson, 'I'm only busy — not overworked.'



Catherine Louise Frazee

When Catherine Frazee was asked to become a member of the Ontario Human Rights Commission, she said she knew it would be an experience not to be missed. And she declares she was right. 'Before I became involved,' she said, 'I did not realize how challenging or how complex the issues would be.'

Ms. Frazee says she is excited to be able to work with such a 'committed, high-calibre group of commissioners.' And she feels strongly that the work they are doing in the human rights area is significant. 'If you look back prior to the Code,' she said, 'you'll see there wasn't a lot one could do to discourage discrimination.'

Ms. Frazee explains that, as a paraplegic, she was often turned away from movie theatres in her youth because of the lack of accessibility for wheelchairs. It was disappointing and frustrating for her, but she didn't feel she could do anything about it.

Now, according to Ms. Frazee, there is recourse. The efforts of several organizations, including the Ontario Human Rights Commission, have helped to educate society about equality of opportunity and equal rights. More and more institutions that provide services, such as theatres and restaurants, are creating greater access to their premises for disabled persons.

'Public education is one of the most important functions of the commission,' said Ms. Frazee. 'We are attempting to create an environment in which there is free-flowing communication.' According to Ms. Frazee, many discriminatory conflicts are caused simply by a lack of communication and awareness, and they could be prevented through discussion.

Ms. Frazee is continuously trying to keep these communication channels open, especially to other people with disabilities. In 1981, the International Year of Disabled Persons, Ms. Frazee took a two-and-a-half month

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Editorial

Seven years later

Earlier this year I ended seven years as Vice-Chairman of the Ontario Human Rights Commission. I do not know what I contributed to its work, but I know I myself learned a great deal.

What I discovered was that even though I had, for many years, been part of race relations groups (the Urban Alliance was founded at Holy Blossom Temple) I had not really been in touch with certain problems of individual citizens. Now, suddenly, I had to deal with men and women who claimed that they had lost their jobs or could not get a position because they were black or foreign born; I learned of women who had been sexually harassed on the job, but who were afraid to say anything lest they deprive their families of their sole bread winner. I found out that the outer calm of Metro Toronto hid a cauldron of conflicting feelings and tensions. I had to confront, once again, the bland assertion that 'you can't regulate decency' and that 'discrimination is part of our social fabric and it will always be.'

There are those who think that the

Human Rights Commission is meddling in private affairs, that it is just another example of Big Brother 'interfering with legitimate personal and business interests'. But the privileged have always been loath to admit that although society gave them every advantage, there are many others who never had access to any real opportunity. There are hundreds of thousands of people in this province who, because of their background or colour, simply don't have a decent chance in life.

After seven years of grappling with these problems as a member of the Human Rights Commission my faith in the basic decency of our society has been greatly strengthened. The first human rights code in Canada, going back to the pioneer days of 1962, was supplanted by the *Human Rights Code*, 1981, which turned out to be an important instrument for change and amelioration. The social climate in Ontario is today better than what I found seven years ago, and I have every reason to believe that it will be even better seven years hence.

W. Gunther Plaut

Withholding pregnancy leave benefits discriminatory

by Jill Armstrong

The Supreme Court of Ontario has decided a case initiated by the London Life Insurance Company, which argued that its insurance policy did not discriminate against the complainant on the basis of sex.

Professor Skidmore had been hospitalized for a medical problem unrelated to her pregnancy. This medical problem occurred 10 weeks prior to the estimated date of delivery. She was not on a pregnancy leave of absence. Her claim for disability benefits was denied by the insurance company because her illness occurred during a period when she was entitled to be on pregnancy leave. She alleged discrimination on the basis of sex, contrary to the Code.

With respect to whether the Court had jurisdiction to hear the case, it was ruled that there is nothing in the Code prohibiting the Court from adjudicating upon relevant issues of law. However, the Court held that 'a decision of the Court does not interfere with the jurisdiction of the commission or in any way preclude the commission from investigating the complaint.'

The Court then addressed the merits of the case and found the provisions

of the policy under which Professor Skidmore was denied disability benefits to be invalid insofar as they refuse benefits during the period an employee *could* elect to be on leave of absence but *is not, in fact*, on leave of absence.

The Court ruled in the favour of the Ontario Human Rights Commission and Professor Patricia Skidmore, the complainant.

The application was therefore dismissed, and costs were awarded against London Life.

This decision will have a far-reaching effect on women who are denied disability benefits during their pregnancies. If an employer offers sick leave coverage to employees, such coverage must be extended to a pregnant woman, except while she is on pregnancy leave.

Arguing the case on behalf of the complainant and commission was Yan Lazor, the commission's legal counsel.

Jill Armstrong is Manager, Program Review and Design, Ontario Human Rights Commission.

Chairman's corner



Jill Armstrong

For well over half a century, Labour Day has provided Canadians with an opportunity to reflect upon and celebrate the activities and contributions of organized labour to our society.

Founded upon the basic principles that recognize the fundamental humanity of each individual and the strength of co-operation, labour unions have traditionally taken an active role in the protection and advancement of human rights.

The labour movement acknowledges that the recognition of human rights is essential to both the well-being of the individual and the strength and cohesion of an organization. Employment is necessary for the individual's economic survival and positive self-perception, and artificial and unrealistic barriers to employment based on grounds such as race, sex, ethnicity, handicap or age adversely affect or restrict the individual's economic opportunity and emotional health. Since internal dissension causes weakness, a number of unions have actively promoted human rights programs in the workplace, programs aimed at decreasing racial tension and sexual harassment.

The philosophical underpinning of the labour movement, with its emphasis on the inherent dignity and worth of the individual, is coincident with the aims of the Ontario Human Rights Commission, as reflected in the preamble to the Code. Labour is conscious of this commonality and has included commission personnel

Welcome new commissioners

Catherine Louise Frazee

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trip to Japan, where she made goodwill visits to nearly 50 centres for the disabled. 'We were always received very warmly in Japan,' she said. 'It was as though we were a *cause célèbre*.'

Ms. Frazee's involvement with the Canadian Paraplegic Association as a board member, and her participation in volunteer projects, such as the Help Line and the Canadian Special Olympics for the Mentally Disabled, led to a position with Esso Petroleum in Halifax. Ms. Frazee was hired to conduct a study of employment opportunities for the disabled in Atlantic Canada.

Later, Ms. Frazee moved to Esso's Toronto office and the position of Product Standards Co-ordinator. Fluently bilingual, she is the technical editor of all promotional literature in English and French and is in charge of the administration of

and publications in its human rights programs. For example, in the wake of the enactment of the new *Human Rights Code*, the Ontario Federation of Labour invited the commission to participate in a workshop to discuss the implications and importance of the new prohibited ground of discrimination based on handicap. The federation also invited the commission to address the topic of Racial Discrimination in the Workplace at a district labour council meeting.

The Ontario Federation of Labour has also been instrumental in mounting successful programs to reduce racism. The powerful 'Racism Hurts Everyone' campaign, begun in 1982, played a key role in increasing public awareness of race relations issues throughout Ontario.

Nationally, the Canadian Labour Congress has consciously made efforts to ensure and promote equal representation of women in the workplace. As a first step, six women vice-presidents were elected to its executive council. Diane Wood, one of the six, indicated that the elected women already hold high-profile positions in their respective unions, and have established strong credibility.

In addition, many unions have taken the initiative with respect to collective agreements, incorporating policies on racial and sexual harassment, and maternity leave for the growing number of women in the workplace.

We praise the contributions of labour groups to the cause of human rights in Ontario and nationwide. The commission and the labour movement will continue to work together, united by their common goal — that of creating a climate of understanding and mutual respect for the dignity and rights of each person so that each may contribute his or her maximum to the economic and social enrichment of our society. We look forward to challenge.

product-quality and product-supply information. 'Learning the technical language at Esso,' she said, 'was like learning a foreign language.'

Linguistics has always been an interest of Ms. Frazee's. She graduated with a Bachelor of Arts from Carleton University, where she majored in English and Linguistics and was awarded a Senate Medal. In 1976 she attended Dalhousie Law School in Halifax, and won the G.O. Forsyth Essay Prize.

Rick Johnston was a graduating student in the Organizational Communications program at Centennial College, and worked with the commission during the spring of 1985

Board of inquiry rules on citizenship requirement

by Rick Johnston

On March 24, 1982 Mr. Ingram Barnard filed a complaint under the *Ontario Human Rights Code, 1980*, alleging that the Canadian Corps of Commissionaires discriminated against him on the basis of nationality.

The corps is an institution that provides employment for war veterans. Commissionaires apply for membership and, if they are admitted, the corps finds work for them as security personnel. But the corps has a stipulation that allows only Canadian citizens or British subjects to become members of their organization.

Mr. Barnard served in the Indian Army during World War II and later in the Indian Civil Service. But when India became independent in 1947, he lost his status as a British subject. Mr. Barnard came to Canada in September 1981 and, although he is a permanent resident, he is not yet a Canadian citizen. On these grounds, the corps refused his application.

Refusing employment to any person because of nationality contravenes section 4 of the Code. But the corps

argued that its relationship with the commissionaires is not one of employment, but rather of membership in a club, and that section 4 should not apply to this case. Subsection 7 of section 4 allows 'fraternal or social organizations' to restrict membership on the basis of nationality.

The board of inquiry, however, found that the relationship is, in essence, one of employment. Commissionaires are assigned to duties and they are paid by the corps. Therefore, section 4 is applicable.

The corps further argued that while it did indirectly discriminate against Mr. Barnard on the basis of citizenship, it did not directly discriminate on the basis of nationality. In the 1980 Code there are no specific provisions to discourage either indirect discrimination or discrimination on the basis of citizenship (these amendments were added in the 1981 Code). And since the complaint was made before the new Code came into effect in June 1982, the corps denied practising discrimination.

Also, according to the corps, commissionaires must swear allegiance to the Crown because it is a necessary requirement in performing their duties. Subsection 7 of section 4 also states that if nationality is 'a *bona fide* occupational qualification', membership can be limited on that basis. As a landed immigrant who had not yet become a Canadian citizen, Mr. Barnard had not completed this ritual of swearing allegiance.

The board of inquiry dismissed this point saying that swearing allegiance to the Crown is not a *bona fide* occupational qualification, and if it is, a non-citizen can meet this requirement without necessarily gaining citizenship. The board also noted that because a person born in Canada does not have to swear allegiance, it is unfair to require landed immigrants to do so.

The board further decided that discrimination on the basis of nationality is a broad category and includes citizenship. For these reasons, the board upheld the complaint of Mr. Barnard, finding that the Canadian

Corps of Commissionaires discriminated against him on the basis of nationality.

The corps was ordered to renew Mr. Barnard's application as soon as possible and compensate him \$1,000 for lost wages. Mr. Barnard has been able to gain employment as a commercial security guard, but he is not earning as much as he would with the corps. The corps was also ordered to award an additional \$500 to Mr. Barnard for insult to his dignity.

The respondent is appealing the decision and order to the Divisional Court of the Supreme Court of Ontario.

Rick Johnston was a graduating student in the Organizational Communications program at Centennial College, and worked with the commission, during the spring of 1985.

Board finds racial discrimination in out-of-province project

The complainant, Mr. G.L. Scott, is a boilermaker-welder. He had expressed interest in a position with Foster Wheeler in Jamaica and was encouraged by the director of the boilermakers' union apprenticeship program to take the required test. After Mr. Scott had taken the test, the director showed him a written list and told him that he would be the first to go to Jamaica if the company required additional workers on the project. However, when four welders were chosen, Scott was not among them. Of the first six names on the applicant list, two had been removed - both were black. Scott asked the director about the deletions and was informed that the company did not want any more blacks because they had experienced considerable difficulties with another black welder already on the project.

A board of inquiry was appointed, and it rendered its decision on May 17, 1985.

The board addressed the issue of whether the decision of the project superintendent, Mr. Fleming, to select other welders in preference to Scott was influenced by considerations of race, colour or place of origin 'either as a main reason or as one incidental to it or as one of many reasons regardless of priority.'

The board found Scott to be 'a skilled welder, a competent and hard worker.' It rejected the project superintendent's testimony that Scott was not willing to 'pitch in' and do 'dirty work' and that he was not capable of hard work. It based the rejection on Fleming's testimony that he selected only the most competent

and hardworking welders for the Jamaican project and that he had the sole and final choice of welders. However, evidence indicated that he did not, in fact, select several of the welders who went to Jamaica.

The board was satisfied that, on a balance of probabilities, Fleming's decision not to hire Scott was influenced by Scott's race or colour. Fleming was clearly acting, in the course of his employment, as an agent of Foster Wheeler. Thus, the company contravened section 4(1)(a) of the *Human Rights Code, R.S.O. 1980*, by refusing to refer or recruit Scott for employment on the basis of his race, colour or place of origin.

The board dealt briefly with an additional issue. The respondent contended that the board lacked jurisdiction because, if a discriminatory decision was made, it was made by the company in Jamaica, and the case was therefore outside provincial jurisdiction. This contention was quickly rejected by the board, for Scott applied for employment in the province of Ontario to an employer subject to the law of Ontario; so the case was, in fact, under the jurisdiction of the Code.

The hearing was bifurcated at the request of the respondent; therefore, the board will deal with the issue of remedy at a later hearing.

The respondent is appealing the decision in the Supreme Court of Ontario, Divisional Court.

Christine Silversides is a second-year law student at Osgoode Hall, York University. She worked with the commission during the summer of 1985.

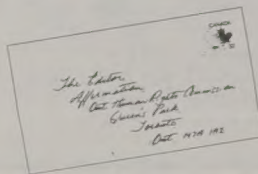
Our readers write

March 19, 1985

Dear Canon Purcell:

I have just had an opportunity to review your *Affirmation* publication of March 1985, and I was very impressed with the content. I was particularly pleased to see the editorial on the rights of children, referring to the work of my colleagues Dr. P.J. Galasso and Dr. James Duthie.

My teaching at the University of Windsor includes Sport and Law, and I would appreciate it very much if I could be added to your mailing



list so that I may receive this worthwhile publication.

Thank you for your assistance in this regard.

Sincerely,

Dick Moriarty, Ph.D.
Professor and Director of Men's Sport
University of Windsor.

Creed accommodated

A Seventh Day Adventist had worked for her company in the cleaning department for 17 years. Her schedule had been arranged to allow her Friday sunset to Saturday sunset off to observe her Sabbath. Recently, shift changes had been instituted, which would require her to work Friday evenings. Her attempts to get her supervisor to change the schedule to accommodate her religious beliefs had been unsuccessful. She was willing to work only four days per week, but was concerned about the possible consequences, such as loss of seniority.

The human rights officer called the manager of Staff Relations of the company, who was aware of the requirement to accommodate employees' religious beliefs. The manager requested that the officer leave the matter with her, and she would attempt to resolve it.

The manager called back to report that an arrangement suitable to both parties had been arrived at, which was confirmed to the complainant and the commission in writing.

Quick settlement

A hearing impaired person complained that he was denied an opportunity to obtain an interpreter by the police officer who was investigating a motor vehicle accident in which he was involved.

After the complainant and the police met to resolve the issue, the respon-

dent agreed to issue a standing order to all police officers advising them to ensure that the hearing impaired have an opportunity to explain themselves with the aid of an interpreter. The complainant was satisfied with this resolution, and his complaint was closed as settled.